THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.5975 OF 2007

DATED 26th MARCH, 2007

Between

Sri Kalika Devi Temple, Uppuguda, Hyderabad, rep.by its Founder Trustee, Malhar Rao Puntambekar.

... Petitioner

AND

The Government of A.P., rep.by its Principal Secretary, Revenue (Endowments.II/I) Department, Secretariat, Hyderabad and others.

.... Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

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ORDER:

Sri Kalika Devi temple represented by its Founder Trustee, Sri Malhar Rao Puntambekar filed the instant writ petition challenging the Memorandum No.38273/Endts.II(1)/2005, dated 28.08.2006 of Government of Andhra Pradesh – first respondent herein; whereunder while confirming the order, dated 02.05.2005, of the Commissioner of Endowments – second respondent herein; rejecting the confirmation of sale, Government dismissed the revision petition filed by the petitioner.

The short fact of the matter is as follows. The petitioner owns an extent of Acs.8.23 guntas in survey Nos.24, 25 and 26 of Kandikalgate Village, Uppuguda in Hyderabad District. As the land became barren and uneconomical, the petitioner approached second respondent for permission to sell the land. Considering the request, the second respondent by notification, dated 10.01.2002, published in A.P.Gazette invited objections and suggestions with regard to the proposal to sell the land. As no objections were received, second respondent vide letter, dated 29.07.002, accorded approval to sell the land by tender-cum-public auction. The auction scheduled on 12.05.2003 could not be conducted due to disruption by some people. Ultimately auction was held on 06.03.2004 in the Office of the second

respondent. An amount of Rs.1,88,65,000/- was offered as a highest bid. The petitioner temple objected the same. The auction was cancelled and fresh auction was notified on 02.12.2004. The same could not be held and again on 27.01.2005 auction was conducted in the presence of high ranking officers of the Endowments Department.

This time, the auction was knocked down for a sum of Rs.2,16,64,566/- in favour of Shri Srigopal Bung and 26 others. The highest bidders allegedly deposited 1/3rd amount i.e. Rs.72,21,522/- one day after the auction. As required under the provisions of A.P.Charitable and Hindu Religious Institutions and Endowments Act, 1987 (the Act, for brevity) and Alienation of Immovable Property Rules, 1987 (hereafter called, the Rules), the proposals were submitted to second respondent for confirmation of the sale. By proceedings, dated 02.05.2005, second respondent refused confirmation. Aggrieved by which, petitioner preferred revision petition before the Government.

Learned counsel for the petitioner submits that when once auction was conducted in a proper and fair manner, it is incumbent on the part of the second respondent to confirm the sale within a period of three months. The rejection order was passed after lapse of three months. Secondly, he submits that it was brought to the notice of first respondent that due to the fact that it is surrounded by a graveyard, nala and slum without any proper approach road, applying the basic value price of Rs.1,400/- per square yard as a standard while rejecting the sale is not proper. In spite of the same, first respondent passed orders without giving reasons and without considering various grounds raised in the revision petition. **Opposing** the writ petition, learned Assistant Government Pleader for Endowments submits that the orders passed by second respondent as confirmed by first respondent is strictly in accordance with Section 80 of the Act, as the highest bid offered was far below the market rate, the confirmation was refused on the ground that it is not in the interest of the temple.

The only question that requires consideration is whether the exercise of powers of respondent Nos.2 and 1 is in accordance with Section 80 of the Act read with Rule 14 of Alienation of Immovable Property Rules, 1987.

All properties belonging to a temple or religious institution or endowment shall vest in charitable or religious institution and endowments as the case may be. Section 14 lays down that all properties belonging to charitable or religious institutions vest in such institution. The Board of Trustees appointed under Section 15 of the Act, by reason of Section 23 is empowered to manage and administer the properties belonging to the institution. Chapter 10 of the Act deals

with alienation of any immovable property belonging to a religious institution. Section 80 thereof deals with alienation of immovable property by way of gift, sale, exchange or mortgage. Clauses (a) (b) and (c) of sub-section (1) of Section 80 of the Act contain procedure for alienation of property by way of public auction. Every institution has to obtain prior sanction of the Commissioner for alienation of the property and Commissioner has to accord such sanction after inviting objections and suggestions for sale of a property and then the sale affected by tender-cum-public auction in the prescribed manner to be confirmed by the Commissioner. First proviso to sub-section (1) of Section 80 of the Act empowers the Government to permit the sale of immovable property otherwise than by public auction in the interest of institution or endowment and the reasons there for have to be recorded in writing. The phrase "Interest of the Institution or Endowment" cannot be given precise meaning only in terms of monetary considerations. The same will vary depending on the facts and circumstances of each case. Be that as it is, the power conferred on the Government by first proviso to sub-section (1) of Section 80 of the Act is by way of an exception. Second proviso to sub-section (1) of Section 80 of the Act contains another exception. The same is to the effect that the Government may purchase the lands situated in scheduled areas belonging to religious institutions or endowments wherever necessary by private negotiations and assign such lands to the members of the Scheduled Tribes.

Section 80 of the Act contains the method, manner and procedure for alienation of immovable property of a religious institution. As noticed hereinabove, the proposal to transfer/alienate the land by way of gift, sale, exchange, mortgage etc., has to be approved by the Commissioner, who is under an obligation to invite objections by publishing the proposal in A.P.Gazette. What are the guidelines in exercise of power by the Commissioner? Section 80(1)(b) of the Act indicates that when

i) transaction is prudent and necessary or beneficial to the institution or endowment;

ii) when the immovable property of the institution is uneconomical to own and maintain; and

iii) the consideration for the alienation is adequate and proper.

These factors would guide the Commissioner not only at the preliminary stage of inviting objections but also at the stage of confirmation of sale by the Commissioner under Section 80(1)(c) of the Act. The scope of Section 80(1) of the Act has been subject matter of various Judgments of this Court. A brief reference to **C.Rami Reddy v**

Government of A.P.,[1] **Y.Nageswara Rao v Government of A.P.,**[2] and **S.Yadaiah v Commissioner of Endowments**[3] would, however, be suffice.

In **Y.Nageswara Rao** (supra), this Court was concerned with the validity of a Government Order according permission to executive authority of Sri Seetharamaswamy Temple, Patamata, in Vijayawada for sale of Acs.0-49 cents of temple land by private negotiations in favour of respondents therein. One Krishnaiah was permitted to put up a hut on the land to keep a watch on the land. After his demise, respondents therein put up structures unauthorisedly over an extent of Acs.0-15 cents. They made representations to the Government requesting for sale of the land by private negotiations. The Government rejected the request. The same was challenged in W.P.No.9004 of 1982. This court allowed the writ petition on the ground that the rejection order did not contain any reasons. Later, on a review being filed by one Y.Nageswara Rao, the writ petition was dismissed following the decision of the Supreme Court in **C.Ramireddy** (supra). In the writ being W.A.No.252 of 1988, Division Bench allowed the plea and gave a direction to the Government to consider the feasibility of permitting private sale. Thereafter, applicants again approached Government for grant of permission for sale of Acs.0-49 cents by private negotiations at the market value. Government then permitted private sale. After verifying the relevant records produced before it, this Court came to the conclusion that the Government passed orders on the premise that it is compelled to do so as per the judgment of the Division Bench in Writ Appeal No.252 of 1988. The Court then relied on **C.Ramireddy** (supra) and held that the judgment of the Division Bench is *per incurium* being contrary to the ratio laid down by the Supreme Court. Accordingly, the court allowed the writ petition invalidating the Government Order permitting private sale by negotiations.

In **S.Yadaiah** (supra), a Division Bench of this Court, to which I was a member, considered proviso to Section 80(1) of the Act. In the said case, the petitioner and others who were in occupation of land belonging to Sri Navagraha Temple, Hyderabad. On a request made by the temple authorities, the Commissioner Endowments invited objections and issued notification under Clause B of sub-section (1) of Section 80 of the Act. The same was impugned in the writ petition. Contending that the petitioners offered to purchase the land at Rs.2,100/- per sq.yard and without considering their request, the land cannot be put to auction. This court placed reliance on the decision of

the Supreme Court in **C.Ramireddy** (supra) as well as another decision of this court in **Vangala Narasimha Charyulu v State of A.P.**[4] and dismissed the writ appeal giving liberty to the appellants participated in the auction.

A reference may also be made to a decision of this Court in **Chinta Ramaiah v Government of A.P.,**[5], wherein it is held as under.

> Under Section 80(1)(c), every sale sanctioned by the Commissioner under clause (b) shall be effected by a tender-cum-public auction in the prescribed manner. The delegated legislation has prescribed the Rules vide G.O.Ms.No.644, dated 30.06.1989 dealing with the sale of immovable property of a religious institution. Besides laying down the procedure to conduct public auction, in Rule 14 of the Alienation of Immovable Property Rules, 1987, it is laid down that the Commissioner, within three months from the date of the sale, shall either confirm or refuse to confirm the sale. When, at the second stage of the confirmation, the Commissioner considers the matter, he is required to keep in mind the same principles as contained in Section 80(1)(b). Merely because tender-cum-auction sale of temple property was sanctioned earlier, it does not mean that the Commissioner should automatically confirm the sale by accepting the highest bid.

In this case, when the auction was conducted in March, 2004, the highest bid was Rs.1,88,65,000/-. That is to say Rs.454.54 per square yard. The petitioner, thus, objected for this price as he thought it was low in March, 2004. Again, when the auction was conducted almost one year thereafter, highest bid by about twenty-seven joint bidders was Rs.2,16,64,506/- @ Rs.522/- per square yard. When the Commissioner considered the confirmation under Section 80(1)(c) of the Act, it was before him that the registration value (basic value register) Rs.1,400/- per square yard. Therefore, the highest bid of Rs.522/- per square yard is certainly lower (37% of the basic registration value) and therefore, it can never be treated as “adequate and proper consideration”.

Further, when the bid was Rs.455/- per square yard, the petitioner temple itself is objected due to which reauction was held. But when the bid is Rs.67 higher at Rs.522/- in the second auction, the petitioner is agitating the matter. The submission that there cannot be better price than this having regard to the location of the land is without any basis. Even on the facts of this case, when the auction was held in March, 2004, the land fetched about Rs.455/- per square yard whereas the same was higher by Rs.67/- in January, 2005. This only shows that even when the auction is conducted, there is a raise in the price, and therefore, the acceptance of the auction was certainly not in

the interest of the temple. The first respondent was, therefore, justified in rejecting the revision and directing the second respondent to get the layout approved and re-auction plotwise. This was done so as to subserve the interest of the religious institution.

Learned counsel sought to criticize the direction of the Government with regard to the preparation of layout. When the Government has directed the second respondent to get the layout approved, it is for him to follow any convenient method to get the things accomplished before taking up auction of the plots. The same cannot be a reason for invalidation of impugned order.

The writ petition is devoid of merit and is accordingly dismissed. No costs.

(V.V.S.RAO,J)

26.03.2007.
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[1] AIR 1986 SC 1159
[2] 1989 (2) ALT 612
[3] 2002 (1) ALT 127 (DB)
[4] 1995(1) ALT 371=1995(1) ALD 467
[5] 2003(3) ALT 59